

HATE CRIMES IN INDIA: NEED FOR A COMPREHENSIVE LEGISLATION

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ABSTRACT

Hate crimes attack the victims not only physically but they and their families begin to question their very own identity causing vulnerable citizens in the country. The hate motivated crimes are not dependent on the behaviour or conduct of a person but are based on his caste, gender, religion, race etc. Hate crimes are on rise in India for the past few decades and if we do not sensitise ourselves with this crime today our future generations cannot live in peace and harmony in this heterogeneous society for very long. These hate crimes may spread beyond the individual victims to a community at large, therefore, there is an utmost need for a legislation with stringent laws and accountability of those responsible for keeping peace in the society.

KEYWORDS: *Hate Crimes, Lynching, Hate Speech, Caste-Based and Gender Based Violence*

INTRODUCTION

While the term “Hate Crimes” came into existence before the mid 1980s the legislations were enacted by very few countries to deal with it. Even after the legislations being enacted and punishments being inflicted for such crimes the recent incidents of hate crimes all over the world shows that the legislations are not enough to deal with this crime.

Although the countries like United states of America and India as a matter of fact, have been following the slogans of “Unity in Diversity” or “Diversely United” they are not followed in letter and spirit. Newspapers and cable news programs broadcast a steady stream of stories about murder, hate crimes, genocide, terrorism and the mass killings of civilians—from Paris and Germany, Iraq, Yemen, and the United States. Recent news headlines have highlighted police brutalization of the African American community, and many cases of hate violence mostly on the basis of caste and religion in India.¹

Recently on 25th May, 2020, a person named George Floyd died in the United States of America. It shows how well the legislation was constructed. One of the Police officers, the so called protectors of the lives of people, pinned down his knee on the neck of George for seven minutes which led to his death.

On 31st May, 2020, in a similar case, four persons allegedly shot dead a Dalit boy named Vikas Jatav after refusing him entry in a temple. The accused belonged to an upper caste.

¹Jamshid A. Marvasti, M.D. and Anton Power, The psychology of hate and hate crimes: The story of those who refused to hate, American journal of forensic psychology, volume 35, issue 1, 2017, p 33.

RECENT CASES OF HATE CRIME IN INDIA

Tabrez Ansari

On 22nd June, 2019 a video went viral in social media where a 24 years old man identified as Tabrez Ansari was beaten for hours in Jharkhand on the pretext of theft. He was married less than two months ago and was the only support of his wife. He was being lynched by the mob and was forced to chant “Jai Shri Ram” and “Jai Hanuman.”

Hafeez Mohammed Haldar

A 26 years old teacher who taught in a religious seminary was thrown out of the train in west Bengal. Hafeez Mohammad Haldar was travelling when a mob chanted “Jai Shri Ram” and pushed him out of the train. He managed to escape death with minor injuries.

Faizal Usman Khan

A 25 years old Muslim cab driver was beaten up by a group of men at night in Mumbai and was forced to chant “Jai Shri Ram”.

Afrazul Khan

A Bengali-Muslim labourer, Afrazul Khan was lynched in Rajasthan. In a viral video a man is seen hacking Khan to death with a pickaxe. The attacker made the video himself and accused the victim of *love jihad*. He then set Khan on fire.

There are numerous other cases where a Dalit was killed because he entered a temple, or he rode a horse to his wedding, he grew a moustache, he drew water from a local well, for eating in front of upper caste people, for marrying a person from an upper caste, for sitting cross legged in front of upper caste people, for bathing in a lake etc.

Even if we hold numerous rallies of “Black Lives Matter” or “Dalit lives Matter” it will soon be forgotten and gone in vain. In this article we will try to understand the evil of “Hate Crimes” in an elaborate form.

Definition of Hate and Hate Crimes

While “hate crime” would be the term most often used in the United States to describe an attack by a white supremacist against an African American, the act would be known in Germany as “right-wing violence” or “xenophobic violence.” In Britain and France, it would be referred to simply as “racial violence.”²

Hate

- intense hostility and aversion usually deriving from fear, anger, or sense of injury
- extreme dislike or disgust: ANTIPATHY, LOATHING had a great *hate* of hard work
- a systematic and especially politically exploited expression of hatred a crime motivated by bigotry and *hate*.³

² Mark S. Hamm, “Terrorism, Hate Crimes, and Anti-Government Violence: A Preliminary Review of the Research” (background paper for National Research Council, Commission on Behavioral and Social Sciences and Education, Committee on Law and Justice, March 1996), p 11.

³ Merriam Webster Dictionary

- The Penguin Dictionary of Psychology defines hate as a “deep, enduring, intense emotion expressing animosity, anger and hostility toward a person, group or object.”⁴

Hate Crime

Any of various crimes (such as assault or defacement of property) when motivated by hostility to the victim as a member of a group (such as one based on color, creed, gender, or sexual orientation).⁵

Hate crime, harassment, intimidation, or physical violence that is motivated by a bias against characteristics of the victim considered integral to his social identity, such as his race, ethnicity, or religion. Some relatively broad hate-crime laws also include sexual orientation and mental or physical disability among the characteristics that define a hate crime.⁶

A crime, usually violent, motivated by prejudice or intolerance toward an individual's national origin, ethnicity, color, religion, gender, gender identity, sexual orientation, or disability.⁷

In nutshell, what we have is gender-based violence, biased violence, caste- based violence, honour killings, communal riots, violence and differential treatment against people on the basis of colour and race, xenophobia, witch-hunting, violence towards LGBTQ community, ragging and bullying in schools and colleges, and such other instances, against which we do rallies and candle marches.

Many of these crimes are largely and exclusively committed in India.

Nature and Characteristics of Hate Crime

A hate crime is not like any other crime. It has some kind of biases attached to it. It is an extreme form of discrimination in which an individual or a group of individuals with common characteristics are targeted.

Schafer and Navarro wrote about the seven stages of hate crimes as a model to understand what an offender may endure before committing violence. These are:

Stage 1: The Haters Gather.

Stage 2: The Hate Group Defines Itself.

Stage 3: The Hate Group Disparages the Target.

Stage 4: The Hate Group Taunts the Target.

Stage 5: The Hate Group Attacks the Target without Weapons.

Stage 6: The Hate Group Attacks the Target with Weapons.

Stage 7: The Hate Group Destroys the Target. ⁸

⁴Reber AS, Reber E: The Penguin Dictionary of Psychology. New York, Penguin Books, 2002

⁵ibid

⁶Encyclopaedia Britannica

⁷www.dictionary.com

⁸Schafer JR, Navarro J: The Seven-Stage Hate Model: the psychopathology of hate groups. FBI Law Enforcement Bulletin, March 2003.

Another aspect in terms of psychology is explained by classifying the offenders in terms of their motivations for committing hate crimes. Levin and McDevitt developed a typology that identified three primary motivations for the commission of hate crime. In extension to their study Glen Kercher, Claire Nolasco and Ling Wu added one more class of offenders by studying various scholars.⁹

- Thrill seeking offenders
- Defensive offenders
- Mission offenders
- Retaliatory offenders

Thrill seeking offenders are looking for excitement—at someone else's expense—by destroying property and harassing minorities, often through brutal physical attacks. Further, they want to exercise their power to gain status and prestige among their peer groups who encourage hatred.

Defensive offenders commit hate crimes to protect or defend their community or way of life that, in their view, is being threatened, simply by the presence of a different group.

Mission offenders are those who are attached to their prejudice and ideology, which becomes a mission to get rid of all members of a particular group of people, believing them to be evil and subhuman.

Retaliatory offenders commit hate crimes in response to a perceived or actual hate crime. This attack could be motivated by a rumour, before even being verified for accuracy.¹⁰

If we look at these theories and compare them and fit them in the Indian Context, we will come to a conclusion that all the hate crimes are motivated by either one or more of these together. But most prominent are the defensive and mission offenders.

History of Hate Crimes in India

In India, Hate crime is not a recent or an unfamiliar concept. The only difference between India and other countries is that in India we don't use the word "Hate Crime". Our authorities prefer to keep the word "Hate" segregated from the word "Crime". We have different laws pertaining to different crimes but there is no law which uses the word "Hate crime" as a blanket for all the crimes done in lieu of hatred or bias against a community or a caste or a race or a religion or a gender or an individual.

The concept of bias-motivated violence is not new to India. It is evident from the fact that how the framers of the Constitution of India, at its very inception expressly addressed the issue of untouchability and declared all practices of discrimination based on untouchability as unconstitutional.¹¹

⁹ McDevitt J, Levin J, Bennett S: Hate crime offenders: an expanded typology. *Journal of Social Issues* 2002; 58:2:303-317, Kercher G, Nolasco C, Wu L: Hate Crimes. Sam Houston State University, 2008.

¹⁰ Ibid.

¹¹ Article 17, The Constitution of India, 1950.

In the Indian history, there are no cases of hate crimes because as said earlier they were never considered as crimes committed due to bias towards someone. These crimes are punishable under different legislations. To make a particular offence punishable one must recognise it as a crime first.

Hate crimes are very common in India and had been so since very long but are known by diverse names such as mob lynching, mob violence, public outrage, cow vigilantism, witch-hunting, communal violence, rioting and caste violence against Dalit Dalits etc. If we look into the history of these individual crimes we may probably find many cases.

In India Hindu-Muslim conflicts are primordial. As the Hindus constitute majority of the population in India they try to socially, politically and religiously have dominance over the other minorities. The Hindus feel agitated while talking about how the Indian subcontinent was invaded by the Muslim emperors- Turks, Afghans, and Mughals. All these rulers forced Hindus to Convert to Islam and it did result in mass conversions. Then came the Britishers who divided the people of India on the basis of religion. With the Independence came the partition of India and Pakistan which resulted in the division on the basis of community. It was known as the most enormous mass migration in history leading to extreme violence on and from both sides. Since then there have been numerous instances of inter-community clashes.¹²

The religious tension in India became dangerously high when Babri Masjid was demolished on December 6, 1992, in Ayodhya, Uttar Pradesh, by Karsewaks of Vishwa Hindu Parishad and allied organisations. They contended that this masjid was built by Babur after demolishing a temple of Lord Rama, Ayodhya, being Lord Rama's birthplace.

After ten years, on February 27, 2002, Sabarmati Express train carrying the Hindu pilgrims from Ayodhya to Godhra, Gujarat, was set on fire. Around 59, most of whom were Karsewaks, died.

It was followed by the Gujarat Violence, which was the extreme violence since Independence in which almost 2000 individuals were killed, 1,50,000 displaced and over 800 women and girls raped, mutilated and burnt, accompanied with destruction, arson attacks, demolition of around 132 Mosques and religious tombs. Most of the victims in this case were Muslims.¹³

There have been an increase in the number of cases of communal riots, since then and have been rapidly increasing every year. There are other types of Hate crimes as well some of them are discussed here.

Types of Hate Crimes in India

Racism

Racism means when people are discriminated on the basis of their colour and ethnic backgrounds. Racial discrimination exists in India but is not taken that seriously. Mostly, it is the people from North East who facing this problem. Many of the racism cases go unattended and only the cases like that of Nido¹⁴ receive media and public attention. Government must act

¹²Chandra, B., Mukherjee, M., Mukherjee, A., Mahajan, S., &Panikkar, K. N. (2016). India's struggle for independence. Gurgaon, Haryana, India: Penguin Books.

¹³ Introduction, Gujarat Ongoing Genocide, Islamic Human Rights Commission, 2002

¹⁴Nido was studying in Jalandhar and came to Delhi to meet his friends. At Lajpat Nagar, he asked for the address from a local shopkeeper. But the shopkeeper along with other fellow shopkeepers in the vicinity made mockery of Nido's hair style and colour. Out of rage, Nido broke the glass item worth Rs. 7,000. Nido was then beaten up mercilessly with iron rods and sticks by six people. Police intervened to solve the matter and made Nido pay back Rs. 7,000, which he did. He then went to his room at his sister's home, but the next day was found dead in

in a significant way and come up with stringent laws to stop the racial discrimination.¹⁵ National Human rights commission conducted a study that revealed that 54% people from North-East India do not find New Delhi a safe and secure place to live, in terms of ethnic tolerance. Whereas, 67% people from North-East faced ethnic and racial discrimination in New Delhi. The living and working conditions for North-East Indians in New Delhi and elsewhere in North India are horrible and hostile. The Supreme Court of India (SC) took stringent action and issued guidelines to curb racial discrimination in the case of Karma Dorjee & Others v. Union of India & Others (December 14, 2016) whereby petitioner had alleged that people from north-eastern region, who move out of their states in search of better opportunities in studies and jobs, were subjected to racial taunts, hate crimes and violence on a daily basis due to their physical appearance at the hands of people of their own country. How can India brag about Unity in Diversity when people of the same country are discriminated by their own people? Despite what we may say, India is a racist country in this scenario. We give more importance to a fairer skin and there are even advertisements showing that you won't get a job or a suitable match if your skin colour is not fair. Along with the people of North- East India, the people from South India are also judged on the basis of their colour. We tend to forget that Kerala is the number one state in terms of literacy, Human Development Index and per capita income. The number of violence cases against women and female infanticide cases are far less as compared to North India but we still show our supremacy by the colour or ethnicity.

India is also a signatory to *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)* which calls for States to prevent and combat racist practices in order to build an international community free from racial segregation. Article 5¹⁶ of this convention is recurrently violated in India.

¹⁵<https://www.mapsofindia.com/my-india/society/indians-discriminate-indians-case-of-racial-discrimination-and-death>.

¹⁶Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (a) The right to equal treatment before the tribunals and all other organs administering justice;
- (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
- (c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
- (d) Other civil rights, in particular:
 - (i) The right to freedom of movement and residence within the border of the State;
 - (ii) The right to leave any country, including one's own, and to return to one's country;
 - (iii) The right to nationality
 - (iv) The right to marriage and choice of spouse;
 - (v) The right to own property alone as well as in association with others;
 - (vi) The right to inherit;
 - (vii) The right to freedom of thought, conscience and religion;
 - (viii) The right to freedom of opinion and expression;
 - (ix) The right to freedom of peaceful assembly and association;
- (e) Economic, social and cultural rights, in particular:
 - (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
 - (ii) The right to form and join trade unions;
 - (iii) The right to housing;
 - (iv) The right to public health, medical care, social security and social services;
 - (v) The right to education and training;
 - (vi) The right to equal participation in cultural activities;

Hate Speech

The term Hate speech means “a speech that carries no meaning other than an expression of hatred for some group, such as a particular race, especially in circumstances in which the communication is likely to provoke violence.”¹⁷

In a country like India with such a diverse culture, religion, races, languages, caste, it is very difficult to draw a line between freedom of speech and expression and hate speech. Freedom of expression certainly allows a person to give their opinion, but if that opinion is an attack, they can instead be a decent person and choose not to give it. Freedom of expression is not equal to being racist, homophobic, sexist, misogynistic etc. Hate crime and consequently hate speech attacks the victim not only physically but also at the very core of his or her Identity.

Although the term hate speech is nowhere mentioned in any statute the laws pertaining to it are identified in legislations.

Apart from the Constitution of India, there are legislations that neutralize the hate speech in India such as The Indian Penal Code under section 153A¹⁸, 153B¹⁹, 295A²⁰, 298²¹, 501(1)²², 501(2)²³ declares that the words spoken or written that promotes dissonance, hatred or looks down upon any religion, culture, language, region, caste, race, community, ethnicity etc is punishable by law.

On similar analogy, the Representation of People Act, 1951²⁴, The Protection of Civil Rights Act, 1955²⁵, Unlawful Activities (Prevention) Act, 1967²⁶, The Code of Criminal Procedure, 1973²⁷, contain provisions for hate speech. However the word Hate speech is nowhere used in these Acts.

There are few instances of Hate speech worth mentioning here. Union Minister Mr. Anurag Thakur and BJP MP Mr. Parvesh Verma received a ban of 72 hours and 96 hours, respectively from campaigning for the Delhi Elections. The reason behind the same was the ‘Hate Speech’ that they delivered in their respective rallies in Delhi. While Mr. Thakur urged the crowd in a rally to shout “*Goli Maaro* (gun down the traitors)”, Mr. Verma claimed in a rally that those who are protesting at Shaheen Bagh against the new Citizenship Law will one day enter the houses and rape our sisters and daughters.²⁸

(f) The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.

¹⁷ Black’s Law Dictionary, 9th Edition as cited in *Pravasi Bhalai Sangathan Vs Union of India*, (2014) 11 SCC 477, para 9.

¹⁸ See, Section 153A, Indian Penal Code, 1860.

¹⁹ See, Section 153B, Indian Penal Code, 1860.

²⁰ See, Section 295A, Indian Penal Code, 1860.

²¹ See, Section 298, Indian Penal Code, 1860.

²² See, Section 501(1), Indian Penal Code, 1860.

²³ See, Section 501(2), Indian Penal Code, 1860.

²⁴ See Sections 8, 324, 123(3), 123(3A) and 125 of The Representation of the People Act, 1951.

²⁵ See, Section 7 of The Protection of Civil Rights Act, 1955.

²⁶ The Unlawful Activities Prevention Act, 1967 has recently imposed a restraint on online speech by banning the internet in Jammu and Kashmir.

²⁷ See, Section 95, 107 and 144 of The Code of Criminal Procedure, 1973.

²⁸ <https://www.ndtv.com/india-news/minister-anurag-thakur-banned-from-delhi-campaign-for-72-hours-bjp-mp-parvesh-verma-for-96-hours-ove-2172076>.

Lynching

Lynching, a form of violence in which a mob, under the pretext of administering justice without trial, executes a presumed offender, often after inflicting torture and corporal mutilation. The term *lynch law* refers to a self-constituted court that imposes sentence on a person without due process of law.²⁹

In *Tehseen S. Poonawala vs. Union of India*³⁰, the supreme court of India has defined Lynching as targeted violence which affects the human body and is against private and public property.

Lynching is again a performative act of hate violence. It has become a concern because these acts of mob-lynching are now video graphed and circulated widely through social media and are kind of celebrated as if they are the acts of national heroism. Lynching can be understood in simple terms as an act where a mob kills any person without hearing his part of arguments; the anger of the mob may be due to a rumour, but taking law in their own hands, they carry on with the execution in public.

Even though the Supreme Court highlighted the need for a concrete definition of ‘lynching’ as a form of vigilantism in July 2018 and directed the state governments to put in place certain preventive, remedial, and punitive measures to combat mob violence, only Rajasthan and Manipur have passed designated legislation. On the other hand, the central government maintains that state governments are competent to enact legislation criminalizing mob lynching. In the absence of any specific laws, these incidents are booked under various legal provisions such as ‘rioting’, ‘unlawful assembly’, ‘murder’, ‘criminal intimidation’, ‘intentional insult with intent to provoke breach of peace’ etc., which dilutes the gravity of the offence and renders the statistics inadequate as well as misleading.³¹

Witch Hunting

Even in today’s scientific era people still believe in witchcraft and black magic. Calling today’s society as progressive when people are still being branded and killed for witchcraft is just hypocrisy.

Witch hunt means “an attempt to find and punish people whose opinions are unpopular and who are said to be a danger to society.”³²

Definition of Witch Hunt

- A searching out for persecution of persons accused of witchcraft
- The searching out and deliberate harassment of those (such as political opponents) with unpopular views.³³

There have been many instances covered by the media. In 2014, national athlete Debjani Bora, who had won several gold medals in Javelin, was accused of witchcraft in Assam and brutally assaulted by the villagers. As I’m writing this article an elderly couple was burnt to death in their sleep on suspicion of practicing witchcraft while a witch doctor allegedly branded a woman’s face with hot iron and forced her to eat pig’s excreta to cure her of an ailment in Odisha. In

²⁹Encyclopaedia Britannica.

³⁰(2018) 6 SC 72.

³¹<https://amnesty.org.in/news-update/hate-crime-reports-on-an-alarming-rise-reveals-amnesty-international-indias-halt-the-hate/>

³²Cambridge Dictionary(dictionary.cambridge.org/)

³³The Merriam-Webster Dictionary(<https://www.merriam-webster.com/dictionary/witch%20hunt>)

Nimapali village of Jajpur district, miscreants set fire to the house of an elderly couple - Shaila and Basanti – Balu late at night when they were sleeping in their home. Villagers suspected the couple of practicing witchcraft after about half a dozen people of Nimapali died due to different causes over the last two weeks. The couple was killed in the blaze.³⁴

This evil practice of witch hunting can be resorted if only effective measures and promulgation of laws are done in an efficient manner. There are legislations enacted by some States where this menace is widely practiced. These are as under:

- Prevention of Witch (Dayan) Practices Act, 1999–Bihar;
- Rajasthan Government enacted the Rajasthan Prevention of Witch-hunting Act, 2015;
- Odisha government enacted the Odisha Prevention of Witch-hunting Act, 2013 which became enforceable in February 2014;
- Chhattisgarh government enacted the Chhattisgarh Tonahi Pratadna Nivaran Act, 2005;

These acts have been passed by the respective state legislatures. There is, however, no central law to restrict the practice or its modern forms at the national level.

It is also important to note that modern witch hunting is a result of age-old beliefs or deep-rooted stereotypical notions against females and bias against women. This is definitely one of the crimes which must be put under the definition of Hate Crime.

Cow Vigilantism

The word vigilante has originated from the word vigilant which means to lookout for possible difficulties and danger. The word Vigilante means a person who tries in an unofficial way to prevent crime, or to catch and punish someone who has committed a crime, especially because they do not think that official organizations, such as the police, are controlling crime effectively. Vigilantes usually join together to form groups.³⁵

A member of a volunteer committee organized to suppress and punish crime summarily (as when the processes of law are viewed as inadequate) *broadly*: a self-appointed doer of justice.³⁶

Cow vigilantism has sadly become a veil for violence, murders and brutality in the name of cow protection. These cow vigilantes are killing men and women to save the cows. There is no denying the fact that the cow is considered a sacred animal in India but does that mean that one human can kill another human being in the name of its protection. It is high time that our leaders must speak out and speak up in favour of those being slaughtered horrifically in the name of cow protection. The legislators must come up with laws on considering this as a hate crime.

Misogyny/ Gender –Based Violence

Misogyny means “feelings of hating women, or the belief that men are much better than women”³⁷ India being a patriarchal society, would never think of misogyny as a hate crime because it is the birth right of a male to insult his wife,

³⁴ Hindustan Times, 20th July, 2020.

³⁵ <https://dictionary.cambridge.org/dictionary/english/vigilante>.

³⁶ <https://www.merriam-webster.com/dictionary/vigilante>.

mother, daughter or a colleague because she is a female. We can very well understand the plight of a female in India as marital rape is not considered as a crime as the law does not consider sexual intercourse by a man with his own wife unless she is below 15 years as a rape even if he does it without her consent.

For years we have been conditioned by our society that women are inferior to men as is being shown in our films these days where the male lead is always glorified. We have made it a part of our upbringing that it's okay to laugh at the jokes about the wife being dumb, or it's alright if the father comes home drunk and beats his wife. We do not raise our voice if a woman is being disrespected at her workplace because we think it to be normal. Different types of gender-based violence include rape, domestic violence, sexual harassment, virginity test, all forms of physical, emotional, sexual, economic abuses to which women, and not men, are victims.

This treatment needs to be stopped and men can help women achieve their rightful place by acknowledging her worth at home and at work by telling her that her consent matters not only sexually but in everyday life.

Caste Based Violence

This is the oldest form of violence that has existed in India and has still not diminished. India banned caste-based discrimination in 1955. Article 15 of the Constitution of India prohibits discrimination based on caste, and Article 17 declared the practice of untouchability to be illegal. But, this law doesn't deter those who adamantly continue to follow the system. The Human Rights Watch (HRW) notes that India's caste system is perhaps the world's longest surviving social hierarchy.

Recently 13 youngsters brutally assaulted a 32 years old Dalit for allegedly touching the bike of an upper caste. The Dalit was stripped naked and thrashed publically. His family members were also beaten with him when they attempted to save him from the mob.³⁸

Three Dalit boys in Jalgaon district's Vakadi village were allegedly stripped, beaten and paraded naked for swimming in a village well. The incident, which took place on June 10, 2020, came to light after a video of it went viral. Maharashtra Minister for Social Justice Dilip Kamble said, "Two persons have already been arrested. An investigation is under way."³⁹

On 17 June, 2018, Prashant Solanki, a Dalit man in his late 20s, was on his way to his wedding riding a colourfully decorated horse, as is common practice, when he was ambushed by a group of upper-caste villagers. They insisted that riding a horse was an upper-caste privilege and threatened to attack Mr. Solanki and his family.⁴⁰

These are just few instances of caste-based violence. Every now and then Dalits are being ill-treated, assaulted, and killed, for many trivial matters. It is of grave concern as to when these attacks will be acknowledged as hate crime.

Xenophobia

Xenophobia means "fear and hatred of strangers or foreigners or of anything that is strange or foreign."⁴¹

³⁷<https://dictionary.cambridge.org/us/dictionary/english/misogyny>

³⁸<https://gulfnews.com/world/asia/india/india-dalit-man-allegedly-stripped-and-assaulted-by-13-for-touching-an-upper-caste-mans-bike-1.1595343062332>

³⁹The Indian Express

⁴⁰BBC News, 19th June, 2018.

“Extreme dislike or fear of foreigners, their customs, their religion, etc.”⁴²

Xenophobia and Racism are similar yet different terms altogether.

As we all know that we were invaded by the French, Portuguese, Britishers, and Turks etc. from time to time. It is natural to hate or have a fear of foreign invaders but as we have come so far after Independence fear has now cropped up into hatred towards immigrants, sometimes turning hostile towards them. This hatred or fear is there because being a citizen of a country we do not think it proper to dilute our culture or ethnicity by these immigrants or foreigners. Here is when it becomes dangerous when we want to eliminate these outsiders from our country.

There have been number of instances where African and Nigerian students were beaten up in Delhi and Bangaluru. They were accused of cannibalism and selling drugs, mostly. We have read about the agitation that took place because of immigration of Rohingyas. We believe in the motto of “Atithi Devo Bhava” but we will only allow Bengali-Hindus to immigrate and not Bengali-Muslims.

All cases of Xenophobia are not reported, and if reported we do not have any law which says that xenophobia is a crime so how are we going to punish the perpetrator?

Honour Killings

Honor killing, most often, the murder of a woman or girl by male family members. The killers justify their actions by claiming that the victim has brought dishonor upon the family name or prestige.⁴³

In India, the government enacted strict penalties for violence against women during the 1980s. However, honor killings based on inter-caste and inter-religious marriages continued to take place in rural areas, where they were largely unreported to police because of direct or indirect support among village residents. Such murders were often ruled as accidents when reported. A woman beaten, burned, strangled, shot, or stabbed to death could be ruled a suicide, even if there were multiple wounds and there was no possibility the woman could have killed herself.

Honour killing (also known as Shame Killing) results, mostly in the death of a woman as she is supposed to keep the honour of a family. We have read about the famous case of Manoj- Babli where a newlywed couple was killed in 2007. The cases of honour killing are prevalent more in northern regions of India particularly Haryana, Punjab, Rajasthan and Uttar Pradesh.

Honour killings are a severe disregard to the human life and a clear violation of Universal Declaration of Human Rights and the fundamental rights enshrined in the Constitution of India.⁴⁴

Now looking at the various crimes which can be covered under the hate crimes there is a dire need of enacting a comprehensive hate crime law.

⁴¹<https://www.merriam-webster.com/dictionary/xenophobia>

⁴²<https://dictionary.cambridge.org/dictionary/english/xenophobia>

⁴³<https://www.britannica.com/topic/honor-killing>

⁴⁴See Article 21, Right to life and personal liberty.

Need for a Legislation

Studies of hate crimes show a steep rise in numbers over the past decade. Amnesty International India's website "Halt the Hate" records the number of hate crimes committed in India as our own National Crime Record Bureau fails to keep an update of the data since 2016. From September, 2015 to June, 2019, Halt the Hate has recorded a total of 902 reported hate crimes in India. A total of 181 incidents of alleged hate crimes were recorded between the months of January and June this year. In 37 reported incidents, the victims were killed. Between January and June 2019, over two-third of the victims suffered harm on account of their Dalit identity followed by their Muslim (40), Adivasi (12), Christian (4) and their actual or perceived sexual orientation or gender identity (6). Some of the alleged hate crimes against Dalits related to denial of access to public property such as roads, water, crematorium, schools etc. Cow-vigilantism related hate crimes and honour killing were reported in 17 cases.⁴⁵

In 2018, Supreme Court directed Central and State Governments to make it widely known that lynching and mob violence would "invite serious consequences under the law".⁴⁶ There were only few States who came up with specific legislations to fight lynching and Mob violence.

The Rajasthan Assembly passed two bills in which death penalty have been proposed for hate crimes against couples in the name of honour and tradition and life imprisonment for mob lynching. The Rajasthan Prohibition of Interference with the freedom of Matrimonial Alliances in the name of Honour and Tradition Bill, 2019 and the Rajasthan Protection from Lynching Bill, 2019 were tabled in the assembly by law minister.⁴⁷

The Uttar Pradesh Law Commission took the initiative to recommend a draft of anti-lynching law. It follows the first ever law against lynching passed in the country, introduced by the Manipur Government which is the most significant statute against religious hate crimes in India. Both the Manipur statute and UPLC draft create a new crime which includes dereliction of duty by police officers. It holds the police officer guilty if he or she failed to prevent lynching without reasonable cause and omits to exercise authority given to them under law. It attracts penalty for one to three years and a fine.

The UPLC also makes provision for compensation to the victim of violence within 30 days of the incident.⁴⁸

These are the legislations which were enacted by the particular State but we need legislation enacted by the Central Government which shall be applicable throughout India. Right now we have scattered laws and legislations against hate crimes because we have not put them together under one head. We must learn from the U.S. It took the United Nations Senate 100 years to approve a bill to make lynching a federal crime. Over 200 anti lynching bills were introduced since 1918, but all were rejected until the Justice for Victims of Lynching Act, 2018.

Unfortunately, hate crimes in India are unknown because the law does not recognise it as a separate offence and in the absence of any specific laws these cases are booked under scattered legislations and provisions. All the political leaders have spoken against hate crimes and expressed pain over such incidents but their words are not backed by action. It is high

⁴⁵<https://amnesty.org.in/news-update/hate-crime-reports-on-an-alarming-rise-reveals-amnesty-international-indias-halt-the-hate/>

⁴⁶Tehseen S. Poonawala vs. Union of India (2018) 6 SC 72.

⁴⁷Hindustan times, August 06, 2019.

⁴⁸<https://www.thehindu.com/opinion/lead/in-hate-crime-fight-a-voice-still-feeble/article28775760.ece>

time that India acknowledges and punishes hate crimes. We cannot let it pass just as routine incidents. We as citizens also need to wake up and question our laws and its inadequacies.

CONCLUSIONS

We wonder sometimes as to how long the survivors of hate crimes who lost their near and dear ones in India have to wait for a government who will finally recognise their pain. Considering the present state of turmoil in Society, the hate crimes are on a rise. In a heterogeneous culture like India it would be next to impossible to live peacefully with one another. There is definitely a necessity for a separate legislation for Hate crimes and it needs to be strictly implemented. First step that can be taken by the authorities is to ensure that the legislation should be broad enough to include lynching, caste based violence, gender based violence, xenophobia, honour killing, racism, cow vigilantism, witch hunting and hate speech under the purview of Hate Crimes. The hate crimes should be distinguished from ordinary crimes. The collection of data for hate crimes should be done periodically. The trials for the hate crimes must be done in fast track courts so that the victims or their survivors do not suffer a secondary attack. As is proposed by the UPLC, compensation should be provided to the victims and their families.

There is a necessity of a comprehensive legislation in India. It is pertinent to mention that the Parliament must wake up as soon as possible and come up with laws on Hate crimes and set up a benchmark for policemen and administrators to deal with hate crime. It is the duty of the politicians, electronic and print media, and the teachers in schools, colleges and universities to inculcate the virtue of tolerance in people and be responsible citizens of India.

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